

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 1, 2004

GSBCA 16467-RELO

In the Matter of ROBERT K. BASS

Robert K. Bass, Orange Park, FL, Claimant.

Judy Hughes, Travel Pay Services, Policy and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

In Edward I. Wexler, GSBCA 16410-RELO (Aug. 11, 2004), we held that the statute and regulations authorizing agencies to reimburse transferred employees for costs they incur in selling homes at their old duty stations and buying homes at their new duty stations should be interpreted broadly. This holding is consistent with the purpose of the laws, which is to require the Government to pay employees' legitimate costs of transfer, thereby minimizing financial losses that employees may incur as a result of their relocations and helping to protect the Government's investment in its skilled manpower. Real estate transaction costs should therefore be reimbursed if they are "allowable" – similar in nature and limited in size to the kinds of costs which are specifically made reimbursable by the Federal Travel Regulation (FTR).

In this case, brought by Department of the Navy employee Robert K. Bass, we apply the holding of Wexler.

Background

Mr. Bass was transferred in December 2000 from a duty station in Georgia to one in Florida. For nearly two years thereafter, he and his wife attempted without success to sell their former residence in Georgia. Shortly before the second anniversary of his transfer, the couple entered into an unusual arrangement through which they divested themselves of ownership of the house.

The essential elements of the arrangement are as follows. Mr. and Mrs. Bass paid \$10,000 to a company called Custom Home Buyers, LLC. At the same time, they transferred to a trust title to the property. Custom Home Buyers was the beneficiary of the trust; it had

the right generally to manage and control the property, and specifically to direct the trustee (who was named by the company) to convey the title to a third party. Under the terms of the trust, when the property was later sold, Custom Home Buyers would receive all the proceeds of the sale, but would pay to Mr. and Mrs. Bass \$120,000. Custom Home Buyers did sell the property (for \$147,000) and did pay the Bases \$120,000.

Settlement costs were incurred both in the transfer of title from Mr. and Mrs. Bass to the trust and in the transfer of title from the trust to the ultimate purchaser. The first group of costs totaled \$1083 – \$550 as a settlement fee to the transfer agent, \$75 for a title insurance binder, \$382 for a title insurance premium, \$50 for document preparation by lawyers, and \$26 in recording fees. The second group of costs totaled \$232 – \$50 for document preparation by lawyers, \$10 in recording fees, \$147 in State of Georgia transfer taxes, and \$25 for a courier fee. Custom Home Buyers paid all of these fees.

Mr. Bass seeks to be reimbursed by the Government the \$10,000 he and his wife paid to Custom Home Buyers for its various roles under the arrangement the Bases entered into with the company. He characterizes the payment as \$8917 in broker's commission and \$1083 in legal and related fees. The Department of Defense (DoD) denied the claim because it could not find in its Joint Travel Regulations (JTR) any specific provision authorizing reimbursement of a charge like the one the Bases paid.

Discussion

In Wexler, we examined the transaction costs the transferred employee incurred in implementing his unusual plan for purchasing a residence at his new duty station. We held that the agency must reimburse the employee for expenses which were similar to costs made expressly reimbursable by the relevant regulations, provided that those expenses were not greater than those customarily paid in the locality of the residence. It is not surprising that DoD did not apply this analysis to Mr. Bass' claim, since the case was filed before Wexler was decided. We apply the analysis now to the costs Mr. and Mrs. Bass incurred in selling their home at their old duty station, and expect that in the future, agencies will use it as to other irregular arrangements by transferred employees for the purchase and sale of their residences.

Of the \$10,000 paid by Mr. and Mrs. Bass to Custom Home Buyers, some was used to pay specific charges for settlement and some was in lieu of a commission to the company for its services of finding an ultimate purchaser for the house.

Two different settlements occurred – one for the transfer of title from the Bases to the trust and one for the transfer from the trust to the ultimate purchaser. Of the costs of the first settlement, all are readily associated with specific charges of sale made reimbursable by the FTR and the JTR – the fee to the transfer agent, fee and premium for title insurance, lawyer's document preparation charge, and recording fees are all encompassed within 41 CFR 302-6.2(c) (2000) and JTR C14002-A.3 (Dec. 2000). These costs are clearly reimbursable – provided that they do not exceed amounts customarily charged in the locality of the residence. We leave to DoD, in the first instance, the determination of the amounts customarily charged in the locality.

Whether costs of the second settlement are reimbursable requires a more detailed analysis, which we undertake in three parts. First, the charges for the lawyer's document preparation and the recording fees, as explained above, are encompassed within 41 CFR 302-6.2(c) and JTR C14002-A.3. They would therefore normally be reimbursable in connection with the sale of a residence. The FTR and JTR provide, however, that when an employee chooses to construct a new home at his new duty station and pays successive settlement fees as a result, the employee may be reimbursed only once for each type of allowable expense. The purpose of the limitation is to restrict reimbursement to whatever it would be if the employee were to have purchased an already-existing house. Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291; Robert D. Lee, GSBCA 14843-RELO, 99-1 BCA ¶ 30,244; see 41 CFR 302-6.2(d)(1)(x), (d)(2)(vi); JTR C14002-A.4.a(10), -A.4.b(6). We think the principle is applicable by analogy to the situation before us now, where successive settlements were necessary to fulfill the terms of the unusual arrangement through which sale of the residence was accomplished. Therefore, the second payments for document preparation and recording should not be reimbursed.

Second, as to the costs of the second settlement, the state's transfer tax is encompassed within 41 CFR 302-6.2(d)(1)(iv) and JTR C14002-A.4.a(4). It was imposed only once and is in an amount required by state law. This expense is therefore reimbursable. Third, as to the charge for courier service, if this service was necessary for the transfer, rather than for reasons of personal preference, it is reimbursable. Kathy D. Peter, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003).

The principal service Custom Home Buyers provided for Mr. and Mrs. Bass was finding someone to buy the house. This sort of service is usually paid for through a broker's fee or real estate commission, and such a cost is expressly made reimbursable by the FTR and JTR. See 41 CFR 302-6.2(a); JTR 14002-A.1. We conclude that to effectuate the purpose of the statute in question, Mr. Bass should be reimbursed for the implicit cost of the commission. Reimbursement of broker's fees or real estate commissions is limited by regulation to "rates generally charged for such services by the broker or by brokers in the locality of the old official station." 41 CFR 302-6.2(a); see also JTR 14002-A.1. Thus, for example, if that rate was six percent of the sales price at the time Mr. and Mrs. Bass transferred title so as to lose control over their former residence, the implicit commission paid to Custom Home Buyers was six percent of the amount they received (\$120,000), or \$7200. If the rate was seven percent (as Mr. Bass believes), the implicit commission was \$8400. DoD should ascertain the appropriate rate before reimbursing the employee for this cost.

Applying this analysis, DoD will reimburse Mr. Bass for most but not all of the \$10,000 he paid to Custom Home Buyers for that firm's services in selling his house. The amount which will remain unreimbursed must be considered a premium the employee paid for entering into an unusual arrangement for the sale.

STEPHEN M. DANIELS
Board Judge